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Jay S. Walker

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte JAY S. WALKER, BRUCE SCHNEIER, SANJAY K. JINDAL,
11 and DANIEL E. TEDESCO

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14 Appeal 2009-007357
15 Application 09/694,191
16 Technology Center 3600
17

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19 Oral Hearing Held: November 5, 2009
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22
23 Before KENNETH W. HAIRSTON, HUBERT LORIN, and ANTON W.
24 FETTING, *Administrative Patent Judges*.

25
26 APPEARANCES:

27
28 ON BEHALF OF THE APPELLANT:

29
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35 The above-entitled matter came on for hearing Thursday, November
36 5, 2009, commencing at 9:01a.m., at the U.S. Patent and Trademark Office,

1 600 Dulany Street, Alexandria, Virginia, before Victor Lindsay, a Notary
2 Public.

3 PROCEEDINGS
4

5 JUDGE HAIRSTON: Okay. My name is Ken Hairston. We have
6 Judges Lorin and Fetting sitting with me today.

7 MR. DOWNS: Good morning, everybody.

8 JUDGE HAIRSTON: Okay. Spell your name for the record.

9 MR. DOWNS: D-o-w-n-s.

10 JUDGE HAIRSTON: Okay. Go ahead. We're ready.

11 MR. DOWNS: Okay. May it please the Court, I'm Michael Downs,
12 representing Purdue, LLC, the Applicants, Appeal No. 2009-007367.

13 The present invention is generally directed to solving a problem of
14 purity file and use of credit card numbers and other financial account
15 identifiers and commerce, and what's interesting about the -- about the
16 reference cited here is that the primary reference, Zampese, is that, you
17 know, Walker, et al., and Zampese were, you know, working on solutions to
18 this problem at approximately the same time, or at least they filed their
19 applications within two weeks of each other.

20 But the proposed solutions are very different. Zampese, for example,
21 decided that he was not concerned about sending the actual credit card
22 number over the Internet. But what he wanted to do was require some -- a
23 special protocol for the users. There would be secret transaction codes that
24 they could provide, along with their credit card number, you know, to an
25 Internet seller.

1 On the other hand, Walker, et al., focused on a way in which they could
2 provide the necessary information that would allow an authorization to
3 transpire, but do so by sending a number, what the application refers to as a
4 single-use credit card number, or a single-use financial account identifier,
5 that could be in the same form as an actual or a conventional credit card
6 number that a card authorization terminal could recognize. This way, there
7 is no requirement of stringing some additional information along.

8 So, looking at the claims, and I'll start -- I'll first direct the discussion
9 towards items 35 through 42, which have been rejected as anticipated by the
10 Zampese reference, and the issue -- and I think it's fairly clear from the
11 Brief, and the issue is fairly simple: Does Zampese teach the -- you know,
12 the combination of subject matter, including the feature that the single-use --
13 that the single-use credit card number, the credit card number that is for use
14 only one time, and it is for use in place of an account number that identified
15 the credit card account, is that single-use credit card number -- does it have
16 the same number of digits as the account number?

17 JUDGE HAIRSTON: What's the significance of that?

18 MR. DOWNS: The significance of that is, as we indicated in the
19 specification, that a number that is formatted in the same manner as the
20 actual account number, could be recognized by a card authorization terminal
21 and proceed through processing without requiring additional information,
22 without requiring an additional, you know, string, like the Zampese solution.

23 JUDGE HAIRSTON: What about less numbers, less number of
24 digits?

25 MR. DOWNS: What? I'm sorry, what about what?

1 JUDGE HAIRSTON: Wouldn't the system recognize a number that's
2 less than the normal number of digits on a credit account, a credit card
3 number?

4 MR. DOWNS: Would the Zampese?

5 JUDGE HAIRSTON: No. I mean would a credit card system
6 recognize a number that's less -- has less digits than a normal credit card
7 number?

8 MR. DOWNS: I do not know the answer to that.

9 JUDGE HAIRSTON: Okay.

10 MR. DOWNS: And I think the -- you know, the solution provided by
11 Walker, et al., you know, was to allow, you know, the transmission of, you
12 know, the set of data that could be recognized as a conventional credit card
13 number. You know, whatever, what the -- whatever the number of digits is,
14 the -- you know, the input, the single-use credit card number, would meet
15 that format. So you wouldn't require this extra stringing of data.

16 And at the same time, you know, I disclosed in the specification one
17 of the manners in which the credit -- that the credit card number itself
18 is -- you know, is not identical to the account number, so you have the
19 added security of not actually transmitting the -- you know, the actual
20 account number in its -- you know, in its conventional format.

21 And so, what we tried to -- what we tried to get the Examiner to talk
22 about was, you know, why in particular, that paragraph in the background,
23 why that suggested or disclosed to him this concept of identity in the number
24 of digits between these two identifiers. And, you know, we did not get a
25 clear answer back on that. And that's why we pushed this forward to appeal,
26 to resolve that factual issue of, you know, does Zampese really anticipate

1 that? Does it disclose all those features in combination? We don't believe it
2 does.

3 JUDGE LORIN: Counsel, this is Judge Lorin. Let me ask you a
4 question about this, these 16 digits. The Examiner cites Zampese for an
5 account number, and that account number is transmitted but it's not the
6 account number on the credit card. Why wouldn't that account number be
7 any number of digits, including the same number of digits as the original
8 credit card number?

9 MR. DOWNS: I was reading Zampese as -- I guess -- no, I don't
10 think we agree that Zampese is sending an account number other than, you
11 know, that user's actual account number.

12 JUDGE LORIN: It's my understanding that Zampese provides two
13 numbers to the purchaser.

14 MR. DOWNS: Correct, right.

15 JUDGE LORIN: There's a unique transaction code and also a unique
16 account code.

17 MR. DOWNS: Correct.

18 JUDGE LORIN: Right? As -- I read that in column 2.

19 MR. DOWNS: Yes.

20 JUDGE LORIN: So, there are two unique codes given to the
21 purchaser.

22 MR. DOWNS: Right.

23 JUDGE LORIN: That corresponds to the transaction. Now, if you
24 just look at the unique account code that corresponds to that transaction, why
25 can't that unique account code be any number, including 16 digits of the
26 credit card number?

1 MR. DOWNS: That account code -- as I understand the grounds of
2 rejection, that account code is being referred to -- it's being submitted as
3 teaching the accounts within the claims. So, yes, so that could be any -- it
4 could be any number of digits.

5 But what's also being asserted is that the account code, strung together
6 with the secret transaction code, however many digits that is, is the same as
7 the number of digits in the account code itself, and that's what -- you know,
8 we just didn't understand how that math works. How the number of digits in
9 the account code could be the same as the number of digits in the account
10 code, plus the transaction code, which appeared to us to be the Examiner's
11 argument.

12 JUDGE LORIN: Right, right, right.

13 But your claim doesn't preclude -- or it doesn't exclude a transaction
14 code, correct? I mean your claim is broadly -- yeah, it's true that it's directed
15 to the account, the account number, but it doesn't exclude there also being a
16 transaction code. You haven't limited the claim to just having a single code
17 that's 16 digits corresponding to the credit card. That is -- that has to be
18 there, but you could also have on top of that a transaction code, just like in
19 the primary reference.

20 MR. DOWNS: I'm not quite sure I understand what you're
21 suggesting. I don't see how -- I don't understand how the -- you know, the
22 credit card number that is for use only one time, you know, that is -- that is
23 what is for use in place of the account number, you know, for example, the
24 actual, you know, credit card number underlying the transaction. And
25 whether or not there could be a transaction code attached to that, the credit

1 card -- you know, Zampese still does not teach that credit card number
2 having the same number of digits as the account number.

3 JUDGE LORIN: Yeah, the -- yeah, some of our difficulties here are
4 the identifiers for the number. You say there is a -- there is this credit card
5 number, this one-time credit card number, but that's not the original credit
6 card number. That's one that's been --

7 MR. DOWNS: It has been generated.

8 JUDGE LORIN: I'm sorry?

9 MR. DOWNS: It has been generated.

10 JUDGE LORIN: Correct.

11 MR. DOWNS: Either just for the transaction or previously.

12 JUDGE LORIN: Correct. It has been generated, and you're labeling
13 it a credit card number. But it's a generated number that corresponds to the
14 account number for the credit card.

15 MR. DOWNS: Correct.

16 JUDGE LORIN: Correct. Now, the prior art doesn't say credit card
17 number, but they're generating an account number --

18 MR. DOWNS: Correct.

19 JUDGE LORIN: -- and a transaction code, which correspond to the
20 original credit card. I mean you're using different labels, but they're all
21 numbers that are being applied to prevent fraud when purchasing something
22 on the Internet using a credit card.

23 MR. DOWNS: I think I -- okay. I think I understand what you're
24 saying. I did not -- all right. So, you're saying that there are actually three
25 numbers in Zampese. There is a credit card number and then there is a
26 unique account code associated with it?

1 JUDGE LORIN: And there's also a transaction code.

2 MR. DOWNS: And there's a transaction code.

3 JUDGE LORIN: Right. I mean, I'm raising this. I'm raising this. It's
4 not precisely what the Examiner's argument is, but I'm just trying to
5 understand your argument in the Brief that you have a number that's exactly
6 the same number of digits as your account number.

7 MR. DOWNS: Okay. I think -- I was -- Applicants are reading
8 Zampese as -- there is not a credit card number separate from the account
9 code. That those are the same in Zampese.

10 JUDGE LORIN: You're saying the unique account code is the same
11 as the credit card number?

12 MR. DOWNS: In Zampese. That's what Zampese refers to as a
13 purchaser's credit card number or a purchaser -- or an account code, that is
14 the same thing.

15 JUDGE LORIN: Why would they be -- I'm a little confused. Why
16 would they be providing an account code to the purchaser? Wouldn't the
17 purchaser already have the code?

18 MR. DOWNS: Well, no. I think, I think the account -- I think
19 the -- the account manager in Zampese is -- you know, it could be a credit
20 card issuer. You know, it could be an account number issuer, like a credit
21 card company. So, they issue, you know, for example, from column 3 on
22 line 38, the process begins by establishing an account for a potential
23 purchaser, assigning the purchaser an account code. That is the setup of the
24 financial account that would be used, you know, to facilitate the transactions
25 in Zampese, and that account code is unique. You know, and I think -- and

1 they also get these secret transaction codes. But I didn't see that there was
2 also another credit card account, or another financial account, in this system.

3 JUDGE LORIN: So, are you saying -- because I see in column 3 -- I
4 see in column 3, line -- you know, here at line 52, any combination of
5 numbers for the account code and transaction code. Are you saying that the
6 number, even if it were 16, they don't correspond to the original credit card
7 number -- or they don't correspond to the account number that you have --
8 that you recite in the claim?

9 MR. DOWNS: I think those sentences are mentioning that either the
10 account code or the transaction code could be any alphanumeric, just to
11 qualify, because the previous sentence was talking about random number
12 generators. And then it goes on to say at the bottom of that paragraph,
13 starting at line 60, the account code need not be physically separate from the
14 transaction code and, when combined, may form a string of digits and
15 characters.

16 So, we've been looking at that account code as being, you know, the
17 unique financial identifier that the system needs, and that's the only real
18 account identifier in the system. And by analogy, you know, it seems to
19 serve the purpose that -- what Walker, et al., refer to as an account number,
20 in that, you know, it's the real -- it's the real unique identifier.

21 And so, because -- and it seems that in examination that this line
22 60, you know, -- it's at 63 -- has been seized upon as saying, ah ha, look.
23 Here is a -- that string is unique and it's for single-use. And that is a
24 reasonable interpretation. That combination, the stringing together of the
25 digits from the account code, plus the transaction code, it is reasonable, I

1 think, that that could be interpreted as a number, as a code, you know, in
2 combination, you know, for use one time.

3 But where we disagree is that the number of digits in that account
4 code plus transaction code can be the same, as it is only in the account code.
5 And the reference in the background to that -- about transmission of credit
6 card numbers over the Internet and encryption, generally has -- we've been
7 unable to understand the argument there, as to why that suggests -- the
8 combination -- the stringing of those two pieces of data somehow, you
9 know, renders -- somehow gives you the same number of digits as the
10 original account code.

11 JUDGE LORIN: Okay, counsel, thank you. You may proceed.

12 MR. DOWNS: So, with respect to -- to continue on with Claims --
13 the rejection of Claims 15, 18, 26 to 32, and 34 as being obvious in light of
14 Bezos in combination with Zampese, application -- excuse me -- Appellants
15 are setting out that the combination, you know, cannot teach these
16 single-use -- a second account identifier for use in place of a first account
17 identifier, where that second includes less than all of the first account
18 identifier.

19 At least for the reason that Bezos clearly discloses that the entire
20 account identifier is necessary and because it must come later, there doesn't
21 appear to be any motivation to modify Zampese to provide for that two-step
22 process where Zampese suggests, you know, rapid commerce is a
23 motivation. And Zampese was clearly focused on streamlining the process
24 by adding additional information in the initial authorization, as opposed to
25 having a two-step process like Bezos.

1 JUDGE LORIN: All right. Counsel, I have a question on this issue.
2 You mentioned the single-use, but I don't see that in Claim 18, for example.

3 MR. DOWNS: You're right. Yes, you're absolutely right.

4 JUDGE LORIN: All right. My second question is this: When I read
5 this Claim here, and I understand that you're corresponding the account
6 identifier in your claim to the credit card number in Bezos, but when I read
7 this claim, it seems to set out a second account identifier and then a first
8 account identifier, and all that is necessary is that the second account
9 identifier not include the entire first account identifier. Correct?

10 MR. DOWNS: Yes.

11 JUDGE LORIN: So, these identifiers could be anything. It could be
12 an account code or it could be a transaction code, as long as the second one
13 does not include the first one.

14 MR. DOWNS: And so long as -- so long as that second account
15 identifier identifies an account, I think is a --

16 JUDGE LORIN: Yeah, but -- yeah, but there's no limit to that in the
17 claim. I mean you could have any number, any identifier.

18 MR. DOWNS: But, that's -- sure, as far as the format of the account
19 identifier, yes. I think that's a reasonably broad interpretation. But I
20 think -- but I base that it must -- it must identify an account.

21 JUDGE LORIN: Okay. My question is why doesn't Zampese meet
22 the claim? Doesn't Zampese send a second identifier? That's not the same
23 as the first identifier. I mean, isn't that the point of Zampese, in order to
24 prevent fraud?

25 MR. DOWNS: I understand what you're suggesting, and yes, I -- the
26 transaction codes in Zampese -- it discloses they are probably random and

1 unique to each purchaser, so they could be used for identifying the account.
2 I believe they are for use in place of any other identifier. By themselves,
3 they are useless.

4 JUDGE LORIN: Yeah, that could be, but I read the claim here as
5 simply providing a second identifier. Well that's different from the first one.
6 I'm just raising this. I mean, again, this is -- I don't believe this was
7 something that was brought up in the answer, but it's just my reading the
8 claim. I just wanted to get your -- you know, to just get your response to
9 that.

10 MR. DOWNS: Yeah. I think, so -- yes, I agree with your point that
11 the transaction code is -- you know, it's relevant to the discussion, and I
12 would just say that the transaction code is not disclosed or suggested as
13 being for use in place of anything else. It's clearly a supplement, Zampese.

14 JUDGE LORIN: Okay. Thank you, counsel.

15 MR. DOWNS: Thank you. Those are all the remarks that I had
16 today. Do you have any further questions?

17 JUDGE HAIRSTON: Any further questions?

18 JUDGE FETTING: No.

19 JUDGE HAIRSTON: Any further questions?

20 JUDGE LORIN: No.

21 JUDGE HAIRSTON: Thank you, counselor.

22 MR. DOWNS: Thank you.

23 (Whereupon, the proceedings, at 9:24 a.m., were concluded.)